

**ADEPT**  
**Legal Commentaries**

October 2004

## **Parliament Activity, October 4-8, 2004**

22 October 2004

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During the aforesaid period Parliament convened on a plenary session, which lasted longer than usual. Parliament heard Minister of Energetics, Iacob Timciuc. He assured the legislature that the heating system was ready for the cold season and that once it got cold it would start operating. Nevertheless, the Minister remained tight lipped on the fate of the indebted apartment blocks whether they would be connected to the heating system or not, and on the eventuality of Russia reducing gas supply and the risks such a move might bring given Moldova's dependence on Gazprom.

During the same session, there was also a hearing of the Ministry of Home Affairs and Prosecutor General. Both of them answered Christian-Democrats' questions on legality of resorting to force against demonstrators in front of Casa Radio. The two claimed police actions were in line with the law, as they attempted to prevent unauthorized protest rallies. They stated Deputy Mayor's decision to authorize the protests had been illegal and was later suspended by Municipal prosecution.

Parliament also examined a number of laws, some of which shall be considered in greater detail.

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### **I. Law on Recalculating Pensions**

**ADEPT Comment:** According to the Law on Recalculating Pensions, as of November 1, 2004 pensions for age limit, disability, and heir shall be recalculated. The first two will be recalculated by changing the formula. The surplus brought by recalculation should be no less than 25% of the established pension.

Under the law, as of November 1 total pension shall not be less than:

- 219,00 Lei - pension for age limit for former agricultural employees;
- 246,00 Lei - pension for age limit for other categories of pensioners;
- 175,00 Lei - pension for I degree disability;
- 169,00 Lei - pension for II degree disability;
- 119,00 Lei - pension for III degree disability.

It is estimated that the move would require 490 million Lei. In the eyes of many experts it is a huge mistake to take such social and election oriented moves, before having a clear picture on how well the budget for this year was enforced.

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### **II. Law on Wine Sale during Wine Festival**

**ADEPT Comment:** On the eve of National Wine Holiday celebrated the third year now, deputies passed this law. It enables companies taking part in the exhibit organized as part of the Wine Festival to sell en detail their products without any license being needed. The maximum amount established was 2 thousand bottles.

### **III. Law on Ratification of Memorandum of Understanding between Republic of Moldova and Denmark on Cooperation in view of Enforcing the Depolluted Development Mechanism provided for in the Kyoto Protocol to the United Nations Framework Convention on Climate Change**

**ADEPT Comment:** Under the Memorandum, Republic of Moldova would cooperate with Denmark by trading its emission quotas in exchange for technologies and projects reducing greenhouse gas emissions. In particular, the parties examine the possibility of undertaking projects using gas from waste and gas methane produced by "Apa-Canal" enterprise to produce electricity. Republic of Moldova joined Kyoto protocol on February 13, 2003.

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### **IV. Draft law on privatization of enterprises to the left of Dniester river and Bender Municipality**

**ADEPT Comment:** The draft was initiated by the President in an attempt to prevent alienation of property towards Tiraspol secessionist authorities. Previously, the Parliament passed another law, thereby it did not guarantee property rights on entities privatized without Chisinau's prior agreement. The new draft, passed in the first reading, was supposed to define privatization procedures.

The law seeks to ensure observance of the social and property rights of the people residing on the left bank of Dniester and Bender Municipality, and prevent any infringement of their rights. The law does not apply to agricultural enterprises.

The following are entitled to take part in the privatization.

- Employees of the privatized enterprise;
- Former employees of the privatized enterprises at the time the law entered into force and were ousted on other grounds than infringement of the labour law, and are currently not employed;
- Pensioners, who worked in the enterprise undergoing privatization before retiring;
- Military, who before recruitment worked in the enterprise undergoing privatization.

Enterprises would be transferred for free into the private property of the aforesaid participants.

Privatization Agreement shall be drawn and signed by the Privatization Department representative, as representative of the public administration on the one hand; and Privatization Council, entrusted to act in the name of privatization participants on the other.

The Government is to decide on the calling and holding staff general assemblies, participants in the privatization process, decision making and distribution of shares.

Under the law, all privatization agreements that were concluded by infringing this law and other normative acts of the Republic of Moldova shall be declared null. The state would only guarantee property rights on enterprises if they were privatized in line with the Republic of Moldova law.

In the eyes of many experts the real goal of the project it to encourage employees of the Transdnistrian enterprises to take an active role and prevent alienation of property. On the other hand, the law would respond to numerous accusations coming from Transdnistria that Moldovan authorities "seek to take over the property preserved in Transdnistria". Thus each and every employee of the enterprise would get a chance to become its cofounder, thus the state guaranteeing his/her right on the stake. So far, there was no official response to the draft from Transdnistria.

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#### **V. Draft law on the modification of the Code of Administrative Offence and toughening sanctions for statistics offences**

**ADEPT Comment:** The draft provides for:

1. Toughening sanctions for the failure to declare in due time or incorrectly of statistics data by responsible persons;
2. Sanctions for publishing the data provided by individuals in questionnaires, without their prior approval.

There were many allegations made by politicians that the census conducted by the Statistics Department would be used by the authorities only if they liked its results, otherwise they won't be made public.

## **Parliament Activity, October 11-15, 2004**

25 October 2004

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As reported by media, last legislative week was the most peaceful and quite in a long time, however not without exceptions, TV debates between the power and opposition. Further, Parliament passed a number of important pieces of legislation, some of which shall be given due consideration.

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### **I. Law on Privatization of Enterprises to the Left of Dniester and Bender Municipality**

**ADEPT Comment:** During the first reading of the draft opposition deputies claimed the document was infringing on the rights of citizens residing to the right of Dniester and de facto "recognizes Tiraspol authorities", however during the final reading they voiced no major objections.

Only several wording amendments were operated: afterwards deputies voted the draft in the second reading, thereby taking a very important political decision.

Noteworthy, the law was initiated by the President of the country in an attempt to prevent illegal alienation of state property in favour of Tiraspol secessionist authorities. Under the law, former and current employees of the enterprises are entitled to take part in the privatization of that particular enterprise. All privatization agreements of enterprises concluded by infringing this law as well as other normative acts of the Republic of Moldova shall be declared null and void. Therefore, the state would be able to guarantee property right on enterprises provided privatization was carried out in line with this law.

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### **II. Law on Liquidation of the Legislative Centre**

**ADEPT Comment:** Via the law provisions from the Law on Government were excluded as regards Legislative Centre. The latter was entrusted to draft and endorse legal acts of the Government and Presidency. The Centre was established in 2001, when Government passed Resolution no. 842, thereby "the process of developing draft laws and other normative acts in the state administration was found unsatisfactory".

Government approved the basic responsibilities of the Centre, its structure and funding.

Almost one year after Government decision, on July 11, 2002 Parliament passed the Law on Completing the Law on Government, thereby including Legislative Centre as part of central public administration subordinated to Government. Interestingly, Government firstly established a new structure and later asked deputies to legalize it, move that gathered a rich harvest of criticism from opposition and majority faction alike.

Following the same pattern of neglecting Parliament, on September 30, 2004 Government decided (Resolution no. 1080) to dissolve Legislative Centre as of October 2004. Its responsibilities were delegated to Ministry of Justice that would be responsible in the future for developing draft laws and draft resolutions of the Government as regards judiciary; provide legal expertise and endorse draft laws and other normative acts; perfect legislation; improve the quality of draft laws, etc.

Only on October 14, 2004 Parliament did endorse Government initiative, expressing its regret that the Centre felt short of the expectations and that legislation was still of low quality.

While examining the draft law no mention was made that it has been developed at the President's initiative. President had personally met with the Centre employees and expressed his hope that they would fighting nepotism and departmental interest and put an end to the chaos in legislation drafting.

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### **III. Law on Converting Debts of the "Cereale-Cupcini" into Securities**

**ADEPT Comment:** Under the law, historic debts of "Cereale Cupcini" (700 thousand Lei to state budget and 2.4 million Lei and 28 thousand USD to Ministry of Finance for foreign credits) were converted into state securities. Cereale-Cupcini would settle its debts to state budget and Ministry of Finance by additionally issuing securities, later to be transferred into their property. The move would enable Cereale-Cupcini to raise its registered capital.

The law does not specify what should be done with other shareholders and what compensation they would get once the value of their shares drops significantly. Apparently, the law was a good way to disguise the bankruptcy so as to avoid any alienation of property.

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### **IV. Draft Law on Governmental Agent - State Representative at the European Court for Human Rights**

**ADEPT Comment:** The draft passed in the first reading outlines the rules for Governmental Agent - representative of Republic of Moldova's Government at the European Court for Human Rights, who shall operate as part of the Ministry of Justice. Under the draft, the Agent shall be appointed/ ousted by the Government, at the recommendation of the Ministry of Justice.

Candidates to the position should: have a law degree; be familiar with administrative law, human rights; be fluent in one of the two languages - English or French. He/she would:

- represent the Government of the Republic of Moldova at the ECHR and exercise any other responsibility provided for in Convention of ECHR Regulation;
- oversee measures adopted in view of enforcing ECHR judgements and recommend authorities measures to be taken so as to avoid any infringement of the Covenant and Additional Protocols;

- inform judges, prosecutors, public officers on the ECHR jurisprudence;
- at the decision of the Government, appeal to ECHR on bilateral cause.

The draft also obliges public authorities and other natural entities of the private law to submit to the Agent in due time all the documents, data and info requested by him/her.

For seven years since leaving the position, Governmental Agents would be prohibited to represent plaintiffs in cases examined by Court, if they took part in the hearings.

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## **V. Draft law on modification of legal acts as regards press**

**ADEPT Comment:** The draft passed in the first reading introduces a string of amendments as regards the operation of media outlets. Under the draft, media outlets and press agencies may establish affiliated structures doing business, other than distributing copies and promotional materials as provided in the Civil Code. In such cases, the structures are registered as legal entities as provided by the Law on Entrepreneurship and Enterprises no. 845-XII of 03.01.92.

Media outlets established as Ltd solely to disseminate advertising materials shall be registered under the Law on Entrepreneurship and Enterprises.

If established as cooperative, media outlets or press agencies shall be registered with the Ministry of Justice in the Single National Registry of periodicals and press agencies. Under the draft, founder of the media outlet would not be allowed to interfere in the editorial policy of the periodical or press agency he/she established.

Also the draft provides that within 3 months, periodicals and press agencies registered under the Law on Entrepreneurship and Enterprises shall re-register with the Ministry of Justice and be included in the Single National Registry. Re-registration shall be for free.

## **Parliament Activity, October 18-22, 2004**

1 November 2004

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Draft budget for 2005 took the central stage during the aforesaid period. As usual deputies heard Minister of Finance and Minister of Economy; raised a number of questions. Later on, leaders of Parliament factions voiced their own positions on the draft.

Opposition pointed the lack of a sustainable strategy of economic development, whereas majority faction criticised insufficient funding of certain fields such as education and agriculture. Further, while opposition considered little funds were allotted to social sphere, majority faction on the contrary stated that funding to these areas rose considerably. Finally, following a tradition already, opposition factions refused voting the draft.

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### **I. Draft Law on State Budget for 2005**

**ADEPT Comment:** The draft budget was passed in the second reading. It envisages an economic growth for the upcoming year with a GDP worth 36.5 billion Lei, as compared to 27.3 billion Lei in 2003 and an estimated 31.9 billion Lei in 2004. Economic growth shall be sustained in 2005 by ensuring macroeconomic stability, by boosting entrepreneurship, in particular:

- Industrial growth worth 23.1 billion Lei, a 13% growth over 2004, while agriculture would grow by 7.8% as compared to 2004;
  - Increasing exports and gradual change of their structure by 180 million Lei as compared to this year; volume of imports covered by exports would surge from 57.7% estimated for this year to 58.2% in 2005;
  - Gradual depreciation of the MDL from 12.4 MDL/USD in 2004 to 12.7 MDL/USD in 2005;
  - Surge in the population's income by 10% yearly;
  - Gradually reducing fiscal burden and extending the taxation base recently established by the Parliament in the Law no.224-XV of July 1, 2004;
  - Boosting foreign and domestic investments;
  - Adjusting fiscal laws to European standards.
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### **II. Law on Facilities for Investments**

**ADEPT Comment:** Via the said law, Parliament operated amendments to legal acts regulating entrepreneurship, so as to equal in rights foreign and domestic investors and establish favourable conditions for their operation.



In particular the law includes provisions on:

1. **Customs facilities** - exemption from the payment of the value of goods imported as to form and/or increase registered capital of the enterprise.
2. **Fiscal facilities** - exemption from the income tax (50%-100%) depending on the contribution to the registered capital of the enterprise;  
- exemption from VAT of fixed assets that are part of the registered capital.
3. **Privatisation facilities** - granting equal opportunities on paying for privatized units.

Deputies rejected Government proposition to allow foreign investors to purchase and hold in their property agricultural plots.

## **Parliament Activity, October 25-29, 2004**

3 November 2004

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High on the Parliament agenda that week was draft budget of social insurance for year 2005. The issue triggered many debates and brought tough questions to Government and majority faction. And this because the law is a key document when it comes to elections.

Opposition accused the ruling party of reducing social spending amidst surging GDP. In its turn, ruling party blamed opposition for not taking care of the social vulnerable groups when they had been in power, for accruing huge foreign debts. As a result Government now had to raise pensions from its own sources so as to ensure bare existence for the vulnerable strata.

Parliament also examined other pieces of legislation, some of which will be considered below.

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### **I. Law on Governmental Agent at the European Court for Human Rights**

**ADEPT Comment:** The law seeks to make the enforcement of the obligations undertaken by the state in ensuring human rights when it adhered to the European Convention of Human Rights more efficient. Under Article 35 of the ECHR's Regulation, contracting parties are represented by agents who may be assisted by councillors or lawyers. Contracting parties, i.e. countries members of the Council of Europe, have different approaches some have delegated this responsibility to Ministry of Justice, while others to the Ministry of Foreign Affairs. In Moldova, Governmental Agent shall be a member of the diplomatic service of the country.

The law regulates the status of Governmental agent and nomination procedure; responsibilities and principles of activity; rights and obligations; cooperation with national institutions and organisations.

On July 26, 2001 Republic of Moldova ratified European Agreement on persons taking part in the proceedings of the European Court for Human Rights thereby granting those persons immunity as regards declarations made orally or in written form in front of the Commission or Court.

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### **II. Law on Real Estate**

**ADEPT Comment:** It regulates how real estate is formed based on the estate already in possession and registered in the real estate registrar. The law regulates ways to form real estate: separation; division; and merger. The law also outlines the registration and formation of agricultural plots, in case there are several nearby plots in property.

### **III. Law on Ratification of Agreement between the Government of the Republic of Moldova and the Government of Albania on Promotion and Protection of Investments**

**ADEPT Comment:** The law was adopted on the eve of Albanian President's official visit to the Republic of Moldova. The Agreement outlines the legal principles that would bolster economic ties between the two countries and investments by natural and legal entities in the other country. Contracting parties engage to manage, use and distribute the investments from other Contracting Party and refrain from any discriminatory or unjust measures.

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### **IV. Draft law on state social insurance budget for year 2005**

**ADEPT Comment:** Albeit many opposition deputies claimed the budget was discriminatory as regards many budget lines, Government and majority faction proved by citing some figures that the draft law is much better than many others, especial those passed prior to 2001. The draft law was passed in the first reading.

For 2005 revenues worth **3485997.6** thousand Lei are forecasted, whereas expenditures worth **3485997.6** thousand Lei, i.e. 25% over what was budgeted for 2004.

Obligatory contributions to the social insurance fund are as follows:

- 27% of the wage and other remuneration payable by employers in view of social insurance of the persons employed under individual or work contract;
- 2% of the wage and other remuneration for the individual insurance of the employees;
- 20% of the wage and other remuneration payable by employers in agriculture in view of social insurance of persons employed to work the land and in animal husbandry;
- natural entities owners of agricultural plots and natural entities renting agricultural plots based on a contract (except for pensioners and handicapped) shall pay 480 Lei annually;
- individual entrepreneurs (except for pensioners and handicapped), lawyers, private notaries, Moldovan citizens working on a contract abroad shall pay 1,374 Lei;
- pensioners and handicapped holding a licence shall pay 30% of its cost.

The draft law provides that failure to pay to social insurance fund shall be sanctioned by a fine equal to 0.1% of the arrears per day, including the day the arrears are paid.